

1 BY MR. WEBER:

2 Q Mr. Ontiveros was a carbon copy of that. Again,
3 the subject is Franklin Hotel installation.

4 A Okay.

5 Q If you can take a moment and read this memo.

6 A I sure will. (pause) Okay.

7 Q Do you recall the circumstances surrounding this
8 particular memo? Or do you recall receiving this memo
9 first?

10 A Yeah, I'm familiar with the buildings that are
11 mentioned.

12 Q Do you recall the circumstances that are discussed
13 here in the memorandum?

14 A Again, just reading from the memo, Ivan was
15 supposed to -- Ivan is the person mentioned in the
16 memorandum -- was supposed to do a survey of some sort and
17 couldn't get done on a particular day.

18 Q And do you notice the handwriting on there? Is
19 that Mr. Price's handwriting to your knowledge?

20 A It appears to be.

21 Q And do you know if you received a copy of this
22 back also with Mr. Price's handwriting?

23 A Yeah, I'm sure I did. I think this is something
24 from my files.

25 Q Do you know why Mr. Price wanted this survey to be

1 done quickly or this inspection rather to be done more
2 quickly?

3 A No.

4 Q Okay. We're done with that document. There has
5 been some discussion that prior to the meeting that was held
6 with you, Mr. Nourain, Mr. Price and Mr. Edward Milstein,
7 that Mr. Nourain received a fax from somebody, a facsimile
8 transmission. Do you recall anything about that?

9 A No.

10 Q You stated that you weren't particularly mad at
11 Mr. Nourain at this one meeting. Did anybody else seem
12 particularly mad at Mr. Nourain?

13 A Not that I can recall.

14 Q Did he --

15 A I mean, I think -- personally, I felt mad at
16 myself for not supervising better, you know, with hindsight.

17 Q Was anybody at the meeting mad at you for that
18 very reason?

19 A I don't know. I mean, in my own point of view I
20 would think that somebody probably would want to be, but,
21 you know, I don't remember anybody being made at me.

22 Q You didn't receive any type of reprimand for not
23 better supervising Mr. Nourain, did you?

24 A No.

25 MR. WEBER: Thank you. Nothing further.

1 JUDGE SIPPEL: I want to just ask you a few
2 questions along these lines. Who told you to supervise
3 Mr. Nourain?

4 THE WITNESS: Um, I'm not really positive. If I
5 could explain or organization a little bit, maybe it will
6 make sense.

7 JUDGE SIPPEL: Well, I don't mind you doing that,
8 but I think that's a fair question. At some point in your
9 life you were told by somebody to supervise Mr. Nourain I
10 take it.

11 THE WITNESS: Um, well --

12 JUDGE SIPPEL: No?

13 THE WITNESS: Because he was in technical, get
14 that right, technical operations, and I headed up technical
15 operations, yes. But there was never really that -- again,
16 if I could, I'll start over a little bit here. The way the
17 organization was laid out, I went to a weekly meeting,
18 executive meeting every week with both Milstein brothers and
19 Peter Price. And although Peter was my direct report, I
20 still reported, well, my information went directly to the
21 Milsteins.

22 And I think as a result of we had stated earlier
23 we had a -- I started off as a general manager of a real
24 little cable company and wear a lot of hats. We had plans
25 to grow with microwave technology. A new President was

1 brought in and a new VP of Operations was brought in and
2 there was a completely different structure. A new
3 accounting department and there was a whole bunch of new
4 faces.

5 When Bruce McKinnon bought the company, it was
6 almost kind of assumed that the piece that, Bruce McKinnon
7 was in charge of all the construction. I worried about it
8 every day, but I reported up through head of construction.
9 Behrooz reported in microwave. I worried about customer
10 service billing, computer systems that run our converter
11 boxes, a whole bunch, installation and repairs. And when he
12 left, Bruce McKinnon left, I still had all those other
13 duties. The microwave, because it had been done a different
14 way, continued to be done that way. Or Peter Price, lawyers
15 in Washington. And so that part of it I never really got
16 involved in. But supervising, that we had buildings, that
17 we had a network to maintain, yeah, I without a doubt
18 supervised him in those things. So, I think we're kind of a
19 product, the organization was kind of a product that we all
20 thought organization. And when Bruce McKinnon left, I think
21 there was kind of just an assumption that some of my duties
22 which were already there and I was already doing them, that
23 I'd continue to do what I was doing.

24 JUDGE SIPPEL: But you got involved in, it was
25 after you got there that you joined the company, right?

1 That you got involved in the -- and when I say you, I mean
2 Liberty got involved in the 18 gigahertz, isn't that right?

3 THE WITNESS: Right. Prior to 18 gigahertz.

4 JUDGE SIPPEL: That was 1991.

5 THE WITNESS: Right. Peter Price wasn't with the
6 company. Bruce McKinnon wasn't with the company. Behrooz
7 Nourain wasn't with the company.

8 JUDGE SIPPEL: Were you with the company?

9 THE WITNESS: Yes.

10 JUDGE SIPPEL: Well, who was taking care of
11 all --

12 THE WITNESS: We didn't have any.

13 JUDGE SIPPEL: There was no -- I thought it was
14 after 1991 that you began -- maybe I got, maybe I misheard
15 your direct testimony.

16 THE WITNESS: I'm sorry.

17 JUDGE SIPPEL: I thought he was asked about 1991.

18 MR. BEGLEITER: That's when licenses became
19 necessary.

20 JUDGE SIPPEL: Well, that's what my question is.
21 Who was responsible for seeing that the licensing was done?

22 THE WITNESS: In 1991?

23 JUDGE SIPPEL: Yes.

24 THE WITNESS: We had a -- again, depending on
25 where we are in 1991, Bruce McKinnon was hired to oversee

1 that.

2 JUDGE SIPPEL: But you had -- let me stop you
3 there. You had nothing to do with it while McKinnon was
4 there.

5 THE WITNESS: Right. And we also had an outside
6 consultant, Joe Stern.

7 JUDGE SIPPEL: Mr. Stern, right. Okay.

8 THE WITNESS: So my involvement there was one of
9 more operational, not getting involved in --

10 JUDGE SIPPEL: I understand that, I understand
11 that. But when do you, when did you acquire an
12 understanding, a distinct understanding that the licensing,
13 supervision of licensing was in your bailiwick, was in your
14 responsibility?

15 THE WITNESS: After this incident.

16 JUDGE SIPPEL: After the incident.

17 THE WITNESS: Yes, summer of '95.

18 JUDGE SIPPEL: But you testified that when you had
19 this meeting in the spring of '95 with Mr. Price,
20 Mr. Nourain and Mr. Milstein, that you felt that you were
21 responsible. You felt that you had fallen down on your
22 responsibilities.

23 THE WITNESS: Yes.

24 JUDGE SIPPEL: Well, how could you, how could you
25 have come to that conclusion without having some kind of a

1 point in time when you knew you had the responsibility?

2 THE WITNESS: I don't know if it was the point in
3 time where I felt, well, up to that point it was my
4 responsibility. I felt that I should have, it should have
5 been my responsibility. It was something I should have had
6 a better hand in.

7 JUDGE SIPPEL: If it should have been your
8 responsibility, it would have been up to somebody senior to
9 you to make it your responsibility, would it not? I'm just
10 having difficulty understanding how you're getting to where
11 you got in terms of feeling you had responsibilities.

12 THE WITNESS: Well, when I described technical
13 operations to you.

14 JUDGE SIPPEL: Yes.

15 THE WITNESS: With the exception of microwave,
16 everything else I worried about.

17 JUDGE SIPPEL: Yes.

18 THE WITNESS: All right.

19 JUDGE SIPPEL: I understand that.

20 THE WITNESS: So to -- in hindsight when that
21 finally came to pass, we had issues with our licenses, I
22 felt responsible that I should have taken -- I made some, I
23 guess a lot of assumptions, they were foolish assumptions,
24 that it was all being taken care of. So that when it did
25 happen, I felt like I really should have not have made those

1 assumptions. It was something I should have taken a closer
2 look at and taken more control of.

3 JUDGE SIPPEL: Did anybody ever tell you prior to
4 April of '95 after -- let me rephrase that question. After
5 Mr. McKinnon left, did anybody ever tell you from Mr. Price
6 on up, you know, keep a watch out on the licensing, be sure
7 we don't activate without a license?

8 THE WITNESS: No.

9 JUDGE SIPPEL: Okay. That's all I have.

10 BY MR. BEGLEITER:

11 Q Mr. Ontiveros, do you know if licenses are
12 necessary for laser transmissions?

13 A If they're necessary? No, they're not.

14 MR. BEGLEITER: No other questions, Your Honor.

15 JUDGE SIPPEL: That's it. You're excused as a
16 witness. As my instructions with the other witnesses,
17 you're not to talk about your testimony with any of the
18 other witnesses in this case. If you have anything that you
19 want to talk about, talk to counsel about it until after
20 this session is over. Once we finish taking this testimony,
21 you'll be relieved from that obligation. Understood?

22 THE WITNESS: Yes.

23 JUDGE SIPPEL: All right. Then you're excused.

24 (Witness exits.)

25 JUDGE SIPPEL: Let's go off the record for a

1 minute.

2 (Whereupon, a brief recess was taken.)

3 JUDGE SIPPEL: We were off the record discussing
4 scheduling and I'm going to give an overview of exactly
5 what's been agreed to or required.

6 First, with respect to witnesses, Mr. Barr will be
7 in here at 9:30 and we expect to -- certainly we'll complete
8 his testimony by the end of the day. Hopefully, we'll
9 complete it by morning.

10 After Mr. Barr, and I'm going to, we'll either
11 have an afternoon session or a Wednesday morning session to
12 have marked and at least identified for the record the four
13 or five documents that Mr. Ontiveros testified to today that
14 were really newly discovered evidence. And then we will
15 also at that time receive TW/CVs Exhibit number, it would be
16 Exhibit 44, I take it, the Edward Milstein deposition
17 transcript.

18 So we can do that all at one time. So that will
19 either be some time tomorrow afternoon or Wednesday morning.
20 And then that will be in a position, at that point I will
21 hear argument with respect to recalling any witnesses. But
22 right now you're going to have a very strong burden on that,
23 because I can't see any basis for doing it.

24 We will then, you will then also propose, you
25 being counsel as a group, will propose new dates for

1 proposed findings and conclusions. And as I indicated off
2 the record, the proposed findings I'm requiring to be
3 submitted within 30 days of the actual shutdown of the
4 record in this case. And you can work out as I say what you
5 feel comfortable with a lesser time, of course, for reply
6 briefs. And also an additional week if necessary on the
7 pleading cycle for the pending motion to take action with
8 respect to document production which that's the open motion
9 still with Time Warner and Cablevision.

10 And with that, I feel comfortable that by
11 Wednesday we will have completed this what I referred to as
12 the mini hearing. And we'll get on with resolving this case
13 one way or the other.

14 I also want to leave with you a thought that I
15 have and that is with respect to if I can grant a summary
16 decision on this, of course, that's going to be a summary
17 decision. If I have to make adverse findings on
18 credibility, I would be inclined to do that with a partial
19 summary decision, I'm sorry, a partial initial decision
20 because there will be a full round of proposed findings and
21 reply propose findings on that particular. I'm just
22 advising you of that up front because I have to think of all
23 the contingencies. Don't infer from anything that I've said
24 there that I've decided which way I want to go on this
25 issue. I'm going to look at, I'm relying very much on a

1 hard look at these proposed findings on the credibility
2 issue from both sides, from all sides. And fortunately, the
3 Bureau is going to do theirs independently. But I just, I'm
4 just stating that at this point so that you understand how
5 I'm thinking procedurally in this case. In any event,
6 whichever of the options that I utilize, this case will be
7 in a position to be ready for appeal after this round of
8 evidence is reviewed by myself. That's all I have to say.
9 It's a quarter to 4:00 and we're in recess until 9:30
10 tomorrow morning. Thank you.

11 (Whereupon, at 3:45 p.m. the hearing was adjourned
12 to be reconvened on Tuesday, January 28th, 1997 at 9:30
13 a.m.)

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REPORTER'S CERTIFICATE

FCC DOCKET NO.: 96-41
CASE TITLE: Liberty Cable, Co., Inc.
HEARING DATE: January 27, 1997
LOCATION: Washington, D. C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Federal Communications Commission.

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